

2004-5 AGREEMENT FOR NON- UTILITY ENERGY EFFICIENCY IMPLEMENTERS

December 2003

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The Utilities will use all or some of the following Attachments

Attachment A

- Implementer's Program Implementation Plan approved by the CPUC on __, 2003

Attachment B

CPUC Reporting Requirements that were posted on the Commission's Energy Efficiency website upon approval of the Commission's approval of PY2004/5 programs, and as modified from time to time by the CPUC's Energy Division; Documents to keep on file

Attachment C

Implementer's Evaluation and Measurement Plan as approved by the CPUC

Attachment D

Specific Contract Conditions, for use consistent with Commission Decisions, specific projects and IOU business practices

THIS AGREEMENT ("Agreement") is made and entered into as of the ____th day of ____, 2003, by and between _____, a _____ corporation ("Implementer"), and IOU _____, a California corporation ("Utility" or "IOU"). Utility and Implementer are also each individually referred to herein as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the Commission in Decision (D.) 03-08-067 adopted policy rules and procedures for energy efficiency programs for Program Years 2004 and 2005 (PY2004/5) in the text of the decision and in the Energy Efficiency Policy Manual (Version 2) dated August, 2003 ("Policy Manual") posted on the Commission's Energy Efficiency website.

WHEREAS, pursuant to D.03-08-067, the California Public Utility Commission ("CPUC"), requested proposals from parties interested in performing energy efficiency work in the service territories of Pacific Gas & Electric ("PG&E"), Southern California Edison Company ("SCE"), Southern California Gas Company ("SoCalGas") and/or San Diego Gas & Electric Company ("SDG&E");

WHEREAS, in response to this request, Implementer submitted a proposal to the CPUC to provide energy efficiency;

WHEREAS, on December 17, 2003 the CPUC selected and approved (or approved with modifications), Implementer's proposed scope of work (hereafter "Proposal");

WHEREAS, the July 1, 2003 Assigned Commissioner Ruling in R.01-08-028 directed Energy Division and Legal Division to revise the standard contract terms developed pursuant to D.01-11-066, D.02-03-056 and D.02-05-046, and directed parties to file comments on those terms;

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants contained herein, the Parties agree as follows:

1. DEFINITIONS

The following terms shall have the following meanings, whether capitalized or not, singular or plural:

“Agreement” or “Contract”: This agreement between IOU and Implementer, including the Appendices.

Days means calendar days, unless otherwise specified.

Direct Install Program means a program that provides resources for the installation of or directly installs energy efficiency measures at the customer's location, or performs maintenance, repair, or optimization services at the customer's location, and where the program is covering the cost in whole or in part of the installation.

Rebate, Loan, or other Financial Assistance Program means a program that provides rebates, loans, co-funding, or other financial assistance for the purchase of energy efficiency measures, including maintenance, repair, or optimization services but does not directly install or in some way participate in the installation at the customer's location.

Approved Report means a report that the IOU has deemed final for that time period, and that has been revised to correct for any noted errors or incomplete sections.

Program Implementation Plan (Implementation Plan or PIP) means the implementer's proposal, including any required revisions or modifications, as approved by the CPUC.

Implementer's Approved Evaluation, Measurement and Verification (EM&V) Plan means the Implementers Submitted EM&V Plan that has undergone the following process: A draft EM&V plan is to be submitted to the CPUC Agreement Representative or Commission designee within 30 days of the Implementer selection of a Commission approved contractor, but not later than 120 days after this Agreement takes effect. The draft plan will be subject to review and modification by the CPUC Agreement Representative or a Commission designee. That reviewed and modified document will become the Approved EM&V Plan.

Direct Implementation Costs are defined by the CPUC's Reporting Requirements Manual as financial incentives/rebates, installation costs, hardware/materials costs, activity costs, and rebate processing/inspection costs. Direct Implementation shall not include costs that per the proposal and reporting requirements are to be allocated to other cost categories.

Cost Categories are defined by the CPUC's Reporting Requirements Manual. They are made up of the following six categories: (1)Administrative; (2)Marketing/Advertising/Outreach; (3)Direct Implementation; (4)EM&V; (5)Financing; and (6)Maximum Performance Award (formerly referred to in the proposal instructions as "Profit.")

All Cost Categories have the same meaning as defined in the Budget for Implementer's Program Implementation Plan and the Reporting Instructions.

Performance Award means a performance-based incentive, of up to 7% of the Approved Total Amount for Authorized Work. It is expected that the Commission or its designee will define the requirements and mechanism that will determine the amount of the performance award at a later date. 7% of program costs will be the maximum amount available to Implementer that may be paid after the review and approval of the Implementer's Final Report and EM&V Report. It is expected that the amount of this award will depend on the degree to which the Implementer meets or exceeds the goals of its Program. The amount to be held in reserve by the IOU and made available as a potential performance award will be designated by Energy Division and will become part of the amount budgeted for the program.

Deleted: total program costs

Savings Programs: Programs with a requirement for demonstrable energy savings.

Information-Only Programs: Programs with no requirement for demonstrable energy savings.

Hard-to-Reach Customers: The term "hard-to-reach" can apply to either residential or non-residential customers. Residential hard-to-reach customers are those customers who do not have easy access to program information or generally do not participate in energy-efficiency programs due to a language, income, housing type, geographic, or home ownership (split incentives) barrier. These barriers are defined as:

- Language – Primary language spoken is other than English, and/or
- Income – Those customers who fall into the moderate income level (income levels less than 400% of the federal poverty guidelines), and/or
- Housing Type – Multi-Family and Mobile Home Tenants, and/or

- Geographic – Residents of areas other than the San Francisco Bay Area, San Diego area, Los Angeles Basin or Sacramento, and/or
- Homeownership – Renters

Non-residential hard-to-reach customers are those customers who do not have easy access to program information or generally do not participate in energy efficiency programs due to language, business size, geographic, or lease (split incentives) barrier. These barriers are defined as:

- Language – Primary language spoken is other than English, and/or
- Business size – Less than ten employees and/or classified as Very Small (customers whose annual electric demand is less than 20 kW, or whose annual gas consumption is less than 10,000 therms, or both), and/or
- Geographic – Businesses in areas other than the San Francisco Bay Area, San Diego area, Los Angeles Basin or Sacramento, and/or
- Lease – Investments in improvements to the building benefit the business only during the lease period; landlords benefit longer.

2. APPENDICES INCORPORATED BY REFERENCE

The following Appendices are made part of this Agreement:

(see list in Table of Contents)

Attachment A
Attachment B
Attachment C
Attachment D

3. IMPLEMENTER'S OBLIGATIONS

Implementer shall perform the work described in **Attachment A**, which is attached hereto incorporated herein by this reference, in accordance with the requirements of the CPUC decisions described in the recitals above ("Authorized Work").

Implementer may request that the CPUC Agreement Representative, in consultation with the IOU, approve modifications to the Authorized Work, consistent with the procedure described in Section 31 of this Agreement.

Implementer shall communicate regularly with the assigned IOU Agreement Representative and shall advise the IOU Agreement Representative of significant problems. Implementer will strive to address minor issues or problems on its own.

3.1 Professional Standards

Implementer shall perform the Authorized Work, and shall furnish required labor, equipment and material with the degree of skill and care that is required by current professional standards.

3.2 Required Reports

Implementer shall submit all Required Reports listed in this section in accordance with the due dates listed below, except for the Program Specific Report For Direct Installation Programs, which is required only for direct install programs, and the Program Specific Report For Rebate, Loan, or other Financial Assistance Programs, which is required only for rebate, loan or other financial assistance programs. The reports shall contain the information and be in the format set forth in **Attachment B**, and shall be submitted electronically in accordance with CPUC reporting requirements.

Report Schedule

Implementer shall submit the Required Reports listed below according to the following schedule

Major Deliverables	Due Date
<p>Program Specific Report For Direct</p> <p>Installation Programs to IOU and CPUC Agreement Reps</p> <p>(Program that provides resources for the installation of or directly installs energy efficiency measures at the customer's location, including maintenance, repair, or optimization services, and where the program is covering the cost in whole or in part of the installation at the customer's location.)</p> <p>1. Installation Standards (if CPUC or IOU Agreement Rep determines these are insufficiently detailed in the Implementation Plan)</p> <p>2. Product Specifications for Eligible Measures/Hardware (if CPUC or IOU Agreement Rep determines these are insufficiently detailed in the Implementation Plan)</p> <p>3. Quality Assurance Procedures</p> <p>4. Current installation schedule (and made available on request during program implementation)</p>	<p>14 Days following execution of this Agreement</p>

Major Deliverables	Due Date
Contact List for Other Programs – Provided by IOU to Implementer	Within 10 Days of Program Approval
Brief Program Description for Marketing Materials	Within 10 Days of Program Approval
List of All EE Programs in IOU Territory – Provided by IOU to Implementer and CPUC Agreement Reps	Within 45 Days of Approval of Utility and Non-Utility Programs for PY2004/5
Plan for Coordination with Other Programs to IOU and CPUC Agreement Reps	As Part of First Monthly Report
LIEE/CARE Description and Measure List – Provided by IOU to Implementer and CPUC Agreement Rep	Within 10 Days of Program Approval
LIEE/CARE Coordination Plan	As Part of First Monthly Report

Major Deliverables	Due Date
Evaluation, Measurement and Verification Draft Plan to CPUC Agreement Rep or Commission Designee	30 days after the Implementer selects an approved EM&V contractor (and no later than 120 days from date Agreement takes effect)
Monthly Report to IOU and CPUC Agreement Reps (Report covering prior month's activities, accomplishments and expenditures)	On or before the 21st calendar day of the month following performance
Invoice and Supporting Documentation to IOU Agreement Rep	On or before the 21st calendar day of the month following performance
Monthly Report Revision to IOU and CPUC Agreement Reps (Revision of Report covering prior month's activities, accomplishments and expenditures)	As requested by IOU Agreement Representative
Final Report to IOU and CPUC Agreement Reps (Report that included cumulative documentation on all program activities and expenditures from culmination through finalization of program.	On or before May 1, 2006
EM&V Report to CPUC Agreement Rep or Commission Designee	On or before July 1, 2006
Final Invoice (exclusive of potential Performance Award) to IOU Agreement Rep	On or before August 21, 2006

All reports shall be submitted, following the reporting protocol established by CPUC staff that may occasionally be revised, no later than the due date listed above to the IOU or CPUC Agreement Representatives (as specified in the above table) for their review, comment and approval. Implementer shall provide additional information to the IOU or CPUC Agreement Representative if requested, consistent with the standard set forth in Section 3.12.

Implementer hereby agrees that providing the information and reports described in this section is a prerequisite to receiving the full payments referred to in Section 6.

3.3 Stop Work Procedures

The IOU Agreement Representative may suspend the Authorized Work for good cause, such as safety concerns, fraud, or excessive customer complaints. IOU may suspend the Authorized Work by orally notifying the Implementer's Agreement Representative to suspend the Authorized Work. The Implementer

shall stop work immediately except as described below. The IOU Agreement Representative shall follow its oral notification with written notice pursuant to Section 25 below and shall obtain the concurrence of the CPUC Agreement Representative to the stop work order as soon as practicable. If the IOU Agreement Representative suspends the Authorized Work, Implementer may complete Authorized Work that it has started at a customer site, but may not begin any new Authorized Work at any new customer sites. Implementer may resume Authorized Work after receiving written notice from IOU that it may resume the Authorized Work.

3.4 Coordination With Other Programs

Implementers shall coordinate with other existing or selected programs, including programs targeting low-income customers, to enhance consistency in rebates and other program details, minimize duplicative administrative costs, and enhance the possibility that programs can be marketed together to avoid duplicative marketing budgets. The IOU shall give Implementer the list of all programs in its service territory, including contact numbers, within ten (10) days of the CPUC's approval of the implementer's program, and for Implementers that operate in the service territories of other IOUs, the IOU shall provide a list of programs in the other service territories.

Within ten (10) days of the CPUC's approval of the implementer's program, the Implementer shall provide to the IOU a description of its program suitable for distribution by the IOU, the CPUC, and other Implementers to inform potential participants, including low-income participants if applicable, about Implementer's program.

In its first monthly report, Implementer shall list programs with which it could coordinate, and describe proposed coordination activities including a time line for each activity. IOU shall review the list of programs and proposed coordination activities, and either approve or suggest reasonable changes. Implementer shall incorporate all changes required by the CPUC Agreement Representative. Implementers shall describe in each monthly report any notable coordination activities with other energy efficiency programs.

Within forty-five (45) days of Commission approval of energy efficiency programs, the IOU shall prepare a complete list that includes the implementer provided program descriptions (suitable for electronic posting and printed distribution) of IOU and non-IOU energy efficiency programs available in its service territory, for posting on the CPUC Energy Efficiency website, and for use by state-wide energy efficiency marketing programs and other program providers.

3.5 Coordination With Low Income Programs

This Section shall only apply to Authorized Work that includes an energy efficiency measure that is included in the IOU Low-Income Energy Efficiency program. This coordination is required because low-income customers who participate in non-Low Income programs in some cases may lose their eligibility for future participation in separately funded Low-Income programs. Further, low income customers should not pay for measures and services that they are eligible for at no cost through pre-existing Low-Income program offerings.

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Implementers whose Authorized Work includes an energy efficiency measure that is included in the IOU Low-Income Energy Efficiency program shall inform all customers about the Low-Income Energy-Efficiency ("LIEE") and California Alternate Rates for Energy (CARE) programs, including eligibility requirements. Implementer shall then ask customers if they believe they are LIEE or CARE-eligible customers, and shall provide written information about the LIEE and CARE programs, including how the customer may participate in the programs and whom they need to contact to participate in LIEE or CARE, before attempting to sell any programs or measures with a cost to any such customers.

Within ten (10) days of the CPUC's approval of the Implementer's program, IOU shall provide Implementer with a written description of its CARE and LIEE programs, including informational handouts for distribution to customers about CARE and LIEE requirements, benefits and whom the customer must contact to participate in the program.

In its first monthly report, Implementer shall submit to IOU a list of measures that require coordination with low-income programs, and its plan for ensuring compliance with this Section. The IOU shall review this information and either approve it or suggest reasonable changes within 15 days, after which time Implementer may assume its LIEE/CARE coordination plan is approved. Implementer shall make any changes required by the CPUC Agreement Representative.

3.6 Prevention of Double-Dipping

Implementer shall implement the following mechanism and shall take other practicable steps to minimize double-dipping:

3.6.1. Prior to providing incentives or services to Customer for an energy efficiency measure other than as excepted by Section 3.11.5, Implementer shall obtain a signed form from Customer stating the following:

- 1) Customer has not received incentives or services for the same measure from another utility, state, or local program;

- 2) Customer agrees not to apply for or receive incentives or services for the same measure from another utility, state, or local program; and
- 3) Customer acknowledges that he or she has received information about the free LIEE program, which offer incentives or services for the same measure(s) that the customer may be eligible for.

3.6.2 Implementer shall keep the Customer-signed forms for at least three years after the end of the contract term or receipt of final payment or receipt of performance award, whichever is later. In addition, Implementer shall submit the Customer-signed forms to the CPUC or IOU upon request.

3.6.3 Implementer, its associates or subcontractors shall not knowingly provide an incentive to a Customer or make payment to a Subcontractor who is receiving compensation for the same product or service either through another PGC-funded program, or through any other funding source.

3.7 Responding to and Tracking Customer Complaints

Implementer shall track all customer complaints that it receives through the mechanism that it describes in its Implementation Plan and EM&V Plan, and shall report on all complaints in its Monthly Reports. Implementer shall maintain a log of all customer complaints it receives, and shall retain that log in electronic form for at least three years after the end of the contract term or receipt of final payment or receipt of performance award, whichever is later.

3.8 Customer Disclosure Obligations

Implementers shall prominently disclose to prospective program participants and customers, orally and in writing, that customers are not obligated to purchase any full fee service or other service beyond that which is funded through the Public Goods Charge funds. The text of the disclosure must be in both English and Spanish and other languages as appropriate if the program specifically targets other language groups.

Implementers shall include the following English and Spanish disclosure text, and where appropriate a non-English or Spanish translation thereof, in all material provided to prospective program participants and customers:

“California consumers are not obligated to purchase any full fee service or other service not funded by this program. This program is funded by California utility ratepayers under the auspices of the California Public Utilities Commission (CPUC.)”

Spanish Translation:

“Los consumidores en California no están obligados a comprar servicios completos o adicionales que no esten cubiertos bajo este programa. Este programa está financiado por los usuarios de servicios públicos en California bajo la jurisdicción de la Comisión de Servicios Públicos de California (CPUC.)”

3.9 End Date for Direct Implementation and Incentive Payments

Implementer shall make payments for Direct implementation activities and final payments for any outstanding incentive obligations no later than March 15, 2006.

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3.10 End Date For EM&V and Administrative Activities and Final Invoice

Unless this Agreement is terminated pursuant to Section 17 below, Implementer shall complete all administrative activities (as defined by workbook and reporting requirements) by no later than May 1, 2006 including submission of the Final Report.

The EM&V Report shall be submitted by July 1, 2006.

The Final Invoice must be received by IOU Agreement Rep by August 21, 2006.

3.11 Cost Reporting and Review

3.11.1 Actual Cost Reporting Requirements

Implementer's actual costs for the Authorized Work must be reported to the IOU Agreement Representative in each Monthly Report using the workbook issued by the CPUC and following the most recent reporting protocol established by CPUC staff. Both the reporting format and reporting protocol are subject to occasional revision. See **Attachment B** for the specific reporting requirements. Implementer's expenditures for administration, marketing, outreach, EM&V, and financing may not exceed the total amount for each of those categories, as approved by the CPUC in the Program Implementation Plan budget worksheet, without the concurrence of the IOU and CPUC Agreement representatives, with the following exceptions: 1) Implementer may increase direct implementation expenditures for work within the scope of the approved PIP, as long as total expenditures do not exceed the total approved compensation set forth in Section 6 below; 2) Implementer may shift up to 5% of the approved expenditures for administration and marketing within those two categories.

3.11.2 Cost Reasonableness

All costs, including subcontractor costs, shall be objectively reasonable, ordinary and necessary and shall be reported at actual cost with no mark-up, e.g. profit, administrative or other indirect costs. Using the Implementer's approved budget, the IOU Agreement Representative may review all reported costs. The IOU reserves the right to reduce costs, with the concurrence of the CPUC Agreement Representative if the costs are in excess of the total cost for that line item in the Implementer's approved budget, and if there is a reasonable basis for the conclusion that the costs are excessive, unreasonable, not ordinary or necessary.

Deleted: same costs in Implementer's approved budget

3.11.3 Cost Allocation Methodology.

Implementer shall respond to questions or requests from IOU or CPUC Agreement Representative on how it has calculated or allocated costs listed in **Attachment B**, and shall make any changes, consistent with the budget format and definitions approved by the CPUC, requested by the IOU with the concurrence of the CPUC Agreement Representative.

3.11.4 Subcontractor Costs/Activities

Subcontractor costs shall be reported according to the format contained in **Attachment B**.

3.11.5 Supporting Documentation

The following supporting documentation, as well as information listed in Attachment B, is required to substantiate contract expenditures. The IOU Agreement Rep will provide to Implementer the format to be used in providing this documentation: Incentives: Submit a spreadsheet that contains the following data in the following order -

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For point of purchase programs, provide:

- 1) number and type of products sold and cost per discount or incentive;
- 2) dates of transactions;
- 3) total value of discounts or incentives.

For events at which products (such as light bulbs) are distributed free-of charge, provide:

- 1) a description of the event, including the date and location, and number of participants;

- 2) quantity of each product given away;
- 3) total value of products distributed.

For upstream incentives paid to manufacturers, distributors, or stores, provide:

- 1) recipient's name and address;
- 2) amount and date of payment;
- 3) total number of incentives paid, and the cost per incentive.

For each incentive paid to customers or contractors (other than point of purchase programs) provide the

- 1) customer name, and address or account number,
- 2) the type of incentive
- 3) the amount paid, and
- 4) the date the payment was sent,

Individual completed customer applications and proof of incentive payment, as well as other supporting documentation pertaining to the performance of this Agreement or the Authorized Work, shall be retained by Implementer for at least three years after the end of the contract term or receipt of final payment or receipt of performance award, whichever is later. These applications should be kept in a logical order (chronologically as a minimum standard) and provided to IOU or CPUC or their designee upon request.

- Labor: For each of the 4 categories (Admin, Marketing, Direct Implementation and EM&V), provide a list of individuals and total hours worked for each person during the month.
- Overhead Items Other Than Travel/Training/Conferences: Implementers do not need to provide supporting documentation for overhead items such as rent, computer equipment, facility charges. However, implementers shall provide this information upon request by the IOU/CPUC.
- Travel/Training/Conference: Implementer shall provide supporting documentation for all travel-related expenditures. While original receipts need not be submitted, Implementer should provide a detailed expense report for all travel expenses, which includes airfare, mileage, meals, lodging, parking, etc. A detailed travel expense report should include the following information: name of person incurring expense, reason for expense, date(s) incurred and type of expense (e.g. Airfare, Airport Parking, Rental Car, Other Parking, Mileage, Meals, Hotel, Other costs, if any)
- Other Expenses: Implementer shall provide supporting data and documentation for all other expense items over \$500.

- Subcontractor Costs: Implementer shall provide a copy of all subcontractor invoices. If only a portion of the subcontractor costs applies to the program, clearly indicate the line items and/or percentage of the invoice amount that should be applied to the program.
- Marketing: Provide a copy of each distinct marketing material produced, and note the quantity of a given marketing material produced and the method of distribution.

3.12 Responding To Requests for Information

During the term of this Agreement, Parties shall respond to all requests for information from the other Party and/or the CPUC Agreement Representative in a timely fashion, but no later than five days after the date the information is requested, unless the Party asks for an extension of time and such extension of time is granted by the requesting party(ies). Parties are expected to request only such information that is relevant and necessary for the performance of obligations of this Agreement and to meet and confer in an effort to resolve disagreements about requests for information before seeking guidance from the CPUC Agreement Representative and/or the assigned ALJ.

3.13 PGC Funds Must Directly Benefit Customers in the Service Territory from which the Funds are Collected

As provided for in Section 5 of the Energy Efficiency Policy Manual, PGC funds must directly benefit the customers in the in the service territory from which the PGC funds were collected.

3.14 Marketing Materials

Implementer shall submit all marketing materials to IOU for review prior to their release, but may release marketing materials without receiving IOU approval. In the event that IOU determines that Implementer's marketing materials are fraudulent, misleading, do not contain the customer disclosure required in Section 3.8, or the funding disclosure required in Section 9.1, or have used IOU's name without permission as required by Section 9.2, it shall require Implementer to cease distribution of such marketing materials until the problems are corrected. .

3.15 Requirements for Collection of Customer Information

Implementer must obtain the names and either IOU account numbers or addresses from all customers, except for customers who receive point of purchase rebates or customers who receive measures that cost in total less than \$20, twenty (20) dollars per customer.

4. UTILITY OBLIGATIONS

4.1 Summary of IOU Administrative Duties

IOU is executing this Agreement as the designated administrator for the CPUC for the limited purpose of administering this agreement. IOU shall oversee the administration of Implementer's Authorized Work as set forth in applicable CPUC decisions and rulings.

IOU's primary administrative responsibilities are to oversee Implementer's work, receive and complete a timely review of all required documents and other pertinent program information, serve as a liaison between the CPUC and Implementer, and timely transfer PGC payments to Implementer for Authorized Work in accordance with the applicable CPUC-approved payment schedule(s) as set forth herein.

4.2. IOU Review of Required Reports and Payment Obligations

A) The IOU shall ensure that monthly reports are delivered by the Implementer on time and according to the most recent reporting protocol established by CPUC staff, as may be occasionally revised. If Implementer has not delivered a required report by the due date and has not notified the IOU Agreement Rep as to the reason for the delay, then the IOU Agreement Rep shall request from Implementer the cause for the delay and an estimated delivery date. If Implementer does not follow the reporting protocol established by CPUC staff, the IOU Agreement Rep shall remind the Implementer to follow the specified reporting protocol and instruct the implementer to resubmit the report following the established protocol.

B) The IOU shall review all reports required under this Agreement to determine whether they (a) contain the information required by this Agreement, including, but not limited to **Attachment A** and **Attachment B**, and that the information is in the format specified herein; (b) comply with the Authorized Work as set forth in **Attachment A**; (c) comply with CPUC requirements (e.g., CPUC's Policy Manual, Chapter 6, Reporting Requirements), and (d) include all information reasonably necessary to allow the IOU and the CPUC to monitor the progress of the Authorized Work. IOU shall complete its review of the monthly reports and any accompanying invoices within 30 days of submission, and shall make payment of the undisputed invoiced amount within 15 days after completion of the review of the monthly report and invoice, except as limited by paragraph D below. If there is a disputed amount, Implementer shall submit a new invoice for that amount once the issues are resolved. IOU shall make payment of the amount previously in dispute with 15 days of receiving a correct invoice, except as limited by paragraph E below.

C) Circumstances that may cause IOU and/or CPUC to dispute an invoice include but are not limited to: Implementer fails post-installation inspections; IOU finds that work has not been completed as reported; or the CPUC is not satisfied with the quality of Implementer's work; or the supporting documentation for the invoice does not match the monthly report.

D) IOU shall ensure that the reports are complete, accurate, consistent with the CPUC reporting requirements, and free from substantive technical errors (e.g. text has been reported in a cell that requires numbers.) If the monthly report and/or invoices are incomplete or not in the proper format, IOU shall notify Implementer of the additional and/or revised documentation needed as soon as possible, and shall strive to request additional information within the first 15 days of the 30 day-review period. Implementer shall strive to respond to requests for additional information within 10 days, and the IOU shall strive to complete its review within 10 days of receiving the additional information. Upon completion of this review, IOU shall inform Implementer and the CPUC Agreement Rep that the monthly report has been "approved." This notice shall be provided using the protocol (subject to occasional revision) established by CPUC staff, and may include electronic posting of the "approved" report.

E) If the invoice and supporting documentation meet the requirements of this Agreement, but the monthly report is incomplete or deficient, IOU shall pay the invoice for that month, but may not pay the next month's invoice until the monthly report is complete unless the CPUC agreement representative authorizes payment notwithstanding the fact that the report is incomplete or deficient. For the final report, the IOU will complete and provide the results of its review to the CPUC Agreement representative within 21 days of submission, and pay any performance award authorized within 21 days of receiving authorization by the ALJ or other Commission designee.

4.2.1 Process of Re-Submitting Revised Reports

Revisions to Implementer's reports shall be handled as follows:

- Workbook: Implementer must submit an updated workbook if there are changes to the workbook.
- Narrative Report: If there are major changes to the narrative, the Implementer should submit a revised report. Implementer may submit errata describing the changes to the report, unless the changes are major as determined by the IOU and/or CPUC Agreement Representative, in which case the Implementer shall submit a revised report.

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Submittal: All submissions relating to revised reports should follow the same submittal requirements as the original submittal.

Once the CPUC Agreement Rep has received notice from the IOU Agreement Rep that a report has been “approved,” no further revisions to that report will be accepted. If the IOU Agreement Representative, Implementer, or CPUC Agreement Representative find that a previously approved report requires substantive changes to the content previously reported (e.g. 10 measures were found to be installed, but 12 were reported), such revisions shall be made by way of a true-up to subsequent monthly reports. Any such true-ups will need to be clearly noted and identified in the report that makes the corrections, substantiated by any necessary documentation, and agreed to by the IOU Agreement Representative.

4.3 Review of Implementer’s Final Report, EM&V Report and Determination of Performance Award

Once the IOU determines that the final report is accurate and complete, it shall notify the CPUC Agreement Representative. If the IOU and Implementer disagree about the accuracy of the final report, the IOU shall forward the final report, noting its concerns, to the CPUC Agreement Representative and the Implementer. The assigned ALJ for OIR 01-08-028, in consultation with the CPUC’s Energy Division, will review program performance, including the EM&V report and approve final program payments to Implementer. IOU will not authorize payment to Implementer until the IOU has received written permission from the ALJ to make the performance award.

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Award of the performance payment of up to 7% of the Implementer’s Approved Total Amount for Authorized Work in Section 6 below is contingent on program performance as determined by the ALJ or Commission designee, based on the degree to which Implementer meets or exceeds the goals of its program. It is expected that the Commission or its designee will further define the requirements and mechanism that will determine the amount of the performance award at a later date. 7% of program costs will be the maximum amount available to Implementer after the review and approval of the Implementer’s Final Report and EM&V Report. The amount to be held in reserve by the IOU and made available as a potential performance award will be designated by Energy Division and will become part of the amount budgeted for the program.

An approved EM&V Plan, and a complete EM&V Report that is consistent with the EM&V Plan, must be submitted to the CPUC Agreement Rep prior to any consideration being given by the CPUC or its designee as to the disposition of any potential performance award.

4.4 Refund of Overpayment of PGC Funds

With respect to any amount subject to refund to the CPUC pursuant to any subsequent CPUC decision or ruling, should the CPUC determine that a refund

is due and seeks to recover such refund, Implementer shall return the amount due to IOU within thirty (30) calendar days of the date Implementer receives written notice that the payment is owed.

5. AGREEMENT REPRESENTATIVES

The CPUC's Agreement Representative, as designated by the CPUC, for all matters related to performance of the Authorized Work under this Agreement is _____ (name).

Implementer designates _____ (name) as Implementer's Agreement Representative for all matters relating to performance of the Authorized Work under this Agreement.

IOU designates _____ (name) as [Utility's] Agreement Representative for all matters relating to ~~performance of the~~ Authorized Work pursuant to this Agreement.

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Deleted: the

The CPUC, the Implementer or the Utility may change their respective Agreement Representative at any time by providing written notice of the change to the other parties following protocol, subject to occasional revision, that is established by CPUC staff.

6. COMPENSATION

Implementer agrees to accept the fees set forth herein as full compensation for all of Implementer's expenses incurred in the performance of the Authorized Work, including profit and applicable taxes, unless otherwise expressly so provided. This amount does not include the Performance Award of up to 7% of the Approved Total Amount for Authorized Work, which is contingent upon meeting and/or exceeding the goals in the PIP, and as substantiated by the EM&V Report.

APPROVED TOTAL AMOUNT FOR AUTHORIZED WORK: \$ _____

7. TIME IS OF THE ESSENCE

The Parties hereby acknowledge that time is of the essence in performing the duties under this Agreement. Failure to comply with stated deadlines or milestones may result in termination of this Agreement, payments being withheld, or other program modifications as directed by the assigned ALJ.

8. EFFECTIVE DATE

This Agreement shall become effective on the later of the date that is signed by both the IOU and Implementer. ~~_____~~

Deleted: and/or the fifth business day following CPUC approval as set forth below in Section 32.2.

9. RESTRICTIONS ON MARKETING

9.1 Use Of CPUC's Name

Except for the required disclosure language per Section 3.8, Implementer may not use the name of the CPUC on marketing materials for its program unless Implementer obtains the prior written approval from the CPUC Agreement Representative. In order to obtain this written approval, Implementer must send a copy of the planned materials to the CPUC Agreement Representative requesting approval to use the CPUC name and/or logo. A copy of the materials should also be sent to the IOU Agreement Representative. Notwithstanding the above, the Implementer shall disclose its source of funding by stating prominently that its program is "funded by California ratepayers under the auspices of the California Public Utilities Commission" in all materials distributed.

9.2 Use of IOU's Name

Except as approved in writing by the IOU, Implementer may not use IOU's name or logo on marketing materials for its program. Implementer further agrees not to state or imply to third parties that IOU has endorsed or approved Implementer or its work.

10. COMPLIANCE WITH APPLICABLE LAWS

Each Party shall comply with all applicable federal, state and local laws, rules and regulations, and shall obtain all applicable licenses and permits for the conduct of the Authorized Work.

11. WARRANTY

Implementer warrants to the CPUC that the Authorized Work shall be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Work is performed so as to ensure that the services performed are correct and appropriate for the purposes contemplated in this Agreement.

12. SAFETY PRECAUTIONS AND PROTECTION OF PROPERTY

Implementer shall plan and conduct the Authorized Work to safeguard persons and property from injury. Implementer shall direct performance of the Authorized Work in compliance with reasonable safety and work practices and applicable federal, state and local laws, rules and regulations, including but not limited to, "Occupational Safety and Health Standards" promulgated by the U.S. Secretary of Labor and the California Division of Occupational Safety and Health.

13. INSURANCE

Implementer shall maintain the following insurance coverage or self insurance coverage at all times during the term of this Agreement. Implementer is also responsible for its subcontractors maintaining the insurance coverage listed in this Agreement. Failure to maintain the required insurance shall be grounds for termination of this Agreement.

Workers' Compensation and Employers' Liability: **statutory minimum.**

Commercial General Liability: **\$1 million minimum.**

Coverage shall: a) By "Additional Insured" endorsement add as insureds Utility, their affiliates, subsidiaries, and parent companies, and Utility' directors, officers, agents and employees with respect to liability arising out of or connected with the Work performed by or for the Implementer. (ISO Form CG2010 or equivalent is preferred.) In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Utility' additional insured requirement: "Utility, their affiliates, subsidiaries, and parent companies, and Utility's directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Implementer are additional insureds under a blanket endorsement." b) Be endorsed to specify that the Implementer's insurance is primary and that any insurance or self-insurance maintained by Utility shall not contribute with it.

Business Auto (if applicable): **\$1 million minimum.**

Professional Liability Insurance (if applicable): **\$1 million minimum.**

Upon request, Implementer shall furnish IOU and the CPUC Agreement Representative with certificates of insurance and endorsements of all required insurance for Implementer and subcontractors. The documentation shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to Utility. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf.

13.1 Self Insurance.

If Implementer is self-insured, Implementer must forward documentation to the IOU that demonstrates to the IOU's satisfaction that Implementer self-insures as a matter of normal business practice before commencing the Authorized Work. The IOU will accept reasonable proof of self-insurance comparable to the above requirements.

14. INDEMNIFICATION

Implementer shall indemnify, hold harmless and defend the CPUC and IOU, its affiliates, subsidiaries, parent companies, officers, managers, directors, agents, and employees, from and against all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) which arise from or are in any way connected with this agreement, including :

- (a) injury to or death of persons, including but not limited to employees of IOU or Implementer;
- (b) injury to property or other interests of the CPUC, IOU, Implementer, or any third party;
- (c) violation of a local, state or federal common law, statute or regulation, including but not limited to, environmental laws or regulations; or
- (d) strict liability imposed by any law or regulation; so long as such injury, violation, or strict liability (as set forth in (a) – (c) above) arises from or is in any way connected with Implementer's performance of, or failure to perform, this Agreement, however caused, regardless of any strict liability or negligence of the CPUC or IOU, whether active or passive, excepting only such loss, damage, cost, expense, liability, strict liability, or violation of law or regulation that is caused by the sole negligence or willful misconduct of the CPUC or IOU, its officers, managers, or employees.

Implementer shall, on the CPUC or IOU's request, defend any action, claim, or suit asserting a claim which might be covered by this indemnity. Implementer shall pay all costs and expenses that may be incurred by the CPUC or IOU in enforcing this indemnity, including reasonable attorney's fees.

15. SUBCONTRACTS

Implementer shall contractually require each subcontractor retained to perform the Authorized Work, to be bound by the terms and conditions in this Agreement protecting IOU and the CPUC which are substantially equivalent to the terms and conditions of this Agreement.

Implementer shall, at all times, be responsible for the work, and acts and omissions, of subcontractors and persons directly or indirectly employed by them in connection with the Authorized Work. This Agreement shall not constitute a contractual relationship between any subcontractor and the CPUC or IOU nor any obligation for payment to any subcontractor.

16. DISPUTE RESOLUTION

Implementer shall try to resolve disagreements relating to this Agreement first with the IOU, and if that fails, then with the CPUC Agreement Representative. If that fails, the Implementer, the CPUC and IOU shall deal in good faith and attempt to informally resolve potential and actual disputes arising out of or relating to this Agreement promptly by negotiations between a duly-appointed representative of the CPUC, a vice president of IOU or his or her designated representative and an executive of similar authority of Implementer, as applicable. Either Party or the CPUC may give the other entities written notice of any dispute within ten (10) days from the date that the dispute arose. Within twenty (20) days after delivery of said notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute, which if the Parties agree, shall include non-binding mediation by a neutral third party. If the matter has not been resolved within thirty (30) days of the first meeting through one of the foregoing methods, either Party may initiate a binding arbitration of the controversy utilizing the American Arbitration Association.

All negotiations, mediation and/or arbitration conducted pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo.

Each Party is required to continue to perform their obligations under this Agreement that are not related to the dispute, pending final resolution of a dispute arising out of or relating to this Agreement.

If the dispute is resolved in favor of Implementer, in whole or in part, at any stage of the dispute resolution process, the CPUC will authorize payment of all or a portion of the withheld amounts within five (5) business days of such resolution. Once the CPUC Agreement Representative authorizes payment, IOU shall transmit payment to Implementer within 14 days of receipt of written notice of CPUC authorization.

17. TERMINATION

Implementer may terminate this Agreement for any reason by providing 30 days advance written notice to the CPUC Agreement Representative and IOU. In the event the Agreement is terminated by Implementer, IOU shall, upon receipt of CPUC approval, pay Implementer all amounts owed under the Agreement for undisputed work performed prior to the effective date of the termination notice. If Implementer's actual costs are materially less than payments Implementer received before effective date of termination notice, Implementer shall refund unspent

dollars to the IOU for deposit in the balancing accounts that tracks the gas and/or electric Public Goods Charge fund. The CPUC shall be responsible for determining disposition of unspent or refunded dollars and for determining materiality for purposes of Sections 17 and 17.1.

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The CPUC may direct the IOU to terminate this Agreement for cause, or upon depletion of the amount of funding authorized by the CPUC for this Agreement. In the event the Agreement is terminated by IOU upon CPUC direction, IOU shall, upon ALJ approval, pay Implementer all amounts owed under the Agreement for undisputed work performed prior to the effective date of the termination notice and reasonable shutdown costs not to exceed the total CPUC approved amount of 2002-03 local energy efficiency funding for the Implementer's program. If Implementer's actual costs are materially less than payments implementer received before effective date of termination notice, Implementer shall refund unspent dollars to the IOU for deposit in the balancing accounts that tracks the gas and/or electric Public Goods Charge fund.

In all cases, termination shall become effective on the last day of the 30-day notice period.

17.1 Termination For Cause

If Implementer fails to perform a material term or condition of this Agreement, and fails to cure such default within 30 business days after receipt of written Notice of Default and Termination from IOU, the ALJ or IOU may declare this Agreement terminated, effective on the last day of said notice period ("Termination Date"). Subject to ALJ approval, Implementer shall be paid for all undisputed work performed prior to the Termination Date, which payment shall not be unreasonably withheld.

Grounds for termination for cause include, but are not limited, to the following situations:

- (1) the failure, refusal or inability of the Implementer to perform any material aspect of the Authorized Work in accordance with the Plan (except as specified in Section 20, "Force Majeure"); or
- (2) Implementer has become insolvent, has exhibited a pattern of failure to pay its bills, or has had checks for payment of its bills returned from suppliers and subcontractors due to insufficient funds; or
- (3) a court of law has enjoined Implementer from performing the Authorized Work; or

- (4) In the ALJ or IOU's reasonable judgment, the Authorized Work will not be completed in the specified time and the IOU has reasonably requested Implementer to take steps necessary to accomplish the required progress and completion, and Implementer has failed to do so; or
- (5) misuse of IOU's name or logo in violation of Section 9 of this Agreement.

17.2 Termination for IOU's Reason

With the approval of the CPUC Agreement Representative, IOU may terminate this Agreement, upon written notice to Implementer. Implementer shall take whatever action will minimize its claim against IOU. If IOU terminates this Agreement, Implementer shall not be entitled to any payment for lost or anticipated profits or overhead on uncompleted portions of the Authorized Work. Any reports, drawings or other documents prepared as part of the Authorized Work prior to the effective date of termination shall be delivered by Implementer to the IOU prior to releasing any final payments to Implementer.

17.3 CPUC Jurisdiction

If the Agreement is terminated, any reports, drawings, specifications, software programs, or other documents required to be prepared and delivered to the CPUC and/or Utility Agreement Representative as part of the Authorized Work which are prepared by Implementer prior to the effective date of such termination shall be delivered to the CPUC and/or IOU Agreement Representative by Implementer prior to the CPUC's approval of and the IOU's release of the final payment owed to Implementer. In no event shall the CPUC or IOU be liable for lost or anticipated profits or overhead on uncompleted portions of the Authorized Work.

18. NON-WAIVER

None of the terms, covenants or conditions of this Agreement shall be considered waived by either Party unless such waiver is specifically stated in writing.

19. ASSIGNMENT

IOU may be required by the CPUC to assign its rights, duties and obligations under this Agreement to the CPUC and/or its designee. Implementer hereby consents to such assignment.

Implementer shall not assign its rights, duties, and obligations under this Agreement without the prior written approval of the CPUC. Unless otherwise expressly agreed by the CPUC, Implementer shall remain responsible for the

quality and timeliness of performance notwithstanding any assignment, or other delegation.

20. FORCE MAJEURE

Neither Party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used in this Section, Force Majeure is defined as: Acts of war and acts of god such as earthquakes, floods and other natural disasters, or actions of others, including but not limited to strikes, lockouts or other industrial disturbance, not within the control or arising from the fault of the Party claiming Force Majeure.

The Party affected by a Force Majeure Event ("Affected Party") shall be excused from performing its obligations under this Agreement to the extent that such performance is prevented or delayed due to the delay occasioned by a Force Majeure event; provided, however, that the suspension of performance is of no greater scope and of no longer duration than is required by such Force Majeure event. If a Force Majeure Event excuses the Implementer from performing its obligations under the Agreement, the Implementer will not be paid for the obligations that were excused because of the Force Majeure Event and must refund unspent dollars to the IOU for deposit in the balancing accounts that tracks the gas and/or electric Public Goods Charge fund.

21. NON-DISCRIMINATION CLAUSE

Implementer and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Implementer and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Implementer and subcontractors shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Implementer and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other similar agreement.

Implementer shall include the nondiscrimination and compliance provisions of this clause in all subcontracts related to this Agreement for the Authorized Work.

22. RIGHT TO AUDIT

Implementer agrees that the IOU and/or the CPUC Agreement Representative, or its designated representatives, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement or the Authorized Work. Implementer agrees to maintain such records for possible audit for at least three years after the end of the contract term or receipt of final payment or receipt of performance award, whichever is later.

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Implementer agrees to allow the auditor(s) reasonable access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Implementer agrees to include a similar right of the CPUC and IOU to audit records and interview staff in any subcontract related to performance of the Authorized Work or this Agreement.

23. INDEPENDENT CONTRACTOR

Implementer, and the agents and employees of Implementer, in the performance of the Authorized Work, shall act in an independent capacity and not as officers, employees or agents of the CPUC or IOU. Nothing in this Agreement shall be construed so as to render Implementer, or any persons hired by Implementer, an employee, agent, representative, joint venturer or partner of the CPUC or IOU, and neither Implementer nor its employees or subcontractors shall hold themselves out to others in such capacity.

24. INTELLECTUAL PROPERTY RIGHTS

24.1 Ownership Of Deliverables

The CPUC shall own all data, reports, information, manuals, computer programs, works of authorship, designs or improvements of equipment, tools or processes (collectively "Developments") or other written, recorded, photographic or visual materials, or other deliverables produced in the performance of this Agreement. Developments do not include equipment or infrastructure purchased for research, development, education or demonstration related to energy efficiency. Implementer shall retain no ownership, interest or title in the Developments except as may otherwise be provided in **Attachment A**.

24.2 Use And Reproduction Rights

If and to the extent that Implementer retains any preexisting rights to any materials furnished under this Agreement, including Developments, Implementer hereby grants to the CPUC the irrevocable, perpetual, non-exclusive, worldwide, royalty free right and license to make, use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works

based on such preexisting rights and derivative works thereof. Any claims of Implementer to proprietary rights in materials furnished under this Agreement must be explicitly set forth in this Agreement.

24.3 Infringement Protection

Implementer represents to IOU and CPUC that the material prepared under this Agreement will not infringe on the copyright, patent, or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. Implementer agrees to indemnify and hold IOU and its parent company, and the CPUC, harmless from and against all liabilities, costs and damages arising out of such infringement, as well as claims of infringement. Implementer further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim, and pay any reasonable attorney's fees incurred by IOU or CPUC in defense of such a suit.

24.4 Claims Substantiation

Implementer represents that it has adequately substantiated all claims made as part of the Authorized Work according to the requirements of California and federal law. Implementer shall substantiate claims made in all program materials, including but not limited to: program descriptions, web sites, fact sheets, brochures, and advertisements ("Program Materials"). Claims include, but are not limited to, statements about the energy efficiency, safety, reliability, or performance of a piece of equipment or category of energy efficiency measures.

For each Program Material, Implementer shall identify all claims, and shall have written evidence and data to substantiate the claim. Implementer shall provide the claims and claims substantiation to the IOU or CPUC Agreement Representative within five (5) business days of a request. If IOU or the CPUC Agreement Representative determines that the evidence or data that Implementer has submitted to IOU is inadequate to substantiate the claim, then Implementer shall either provide additional evidence or data, that in IOU's or CPUC's sole discretion is adequate to substantiate the claim, or redraft or eliminate the claim so that the data and evidence, in the IOU or CPUC Agreement Representative's sole discretion, adequately supports the claims made.

Implementer agrees to indemnify and hold IOU and its parent company, and the CPUC, harmless from and against all liabilities, costs and damages arising out of or related to claims that are inadequately substantiated. Implementer further agrees to pay any judgment or reasonable settlement offer resulting from a suit or demand, and pay any reasonable attorney's fees incurred by IOU or CPUC in defense of such a suit.

25. NOTICES OR DEMANDS

Any written notice, demand or request required or authorized in connection with this Agreement, shall be deemed properly given if delivered in person or sent by facsimile, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by a Party. Section 31 provides that requests for contract amendments may be sent by e-mail. Notices shall be addressed as follows:

CPUC AGREEMENT REPRESENTATIVE	
Name:	_____
Attention:	_____
Mailing Address:	_____
Street Address:	_____
Telephone:	_____
Fax:	_____
e-mail:	_____
IMPLEMENTER AGREEMENT	
REPRESENTATIVE	
Name:	_____
Attention:	_____
Mailing Address:	_____
Street Address:	_____
Telephone:	_____
Fax:	_____
e-mail:	_____
IOU AGREEMENT REPRESENTATIVE	
Name:	_____
Attention:	_____
Mailing Address:	_____
Street Address:	_____
Telephone:	_____
Fax:	_____
e-mail:	_____

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Notices shall be deemed received by the Agreement Representative (a) if personally or hand-delivered, upon the date of delivery to the address of the person authorized to receive such notice if delivered before 5:00 p.m., or otherwise on the business day following personal delivery; (b) if mailed, three business days after the date the notice is postmarked; (c) if by facsimile, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; or (d) if by overnight courier: on the business day following delivery to the overnight courier within the time limits set by that courier for next-day delivery.

26. UNENFORCEABLE PROVISION

In the event that one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement.

27. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or in any way relating to this Agreement which cannot be amicably settled without court action shall be litigated in a California State Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California State Court, in a Federal Court of competent jurisdiction situated in the State of California.

28. SECTION HEADINGS

Section headings appearing in this Agreement are for convenience only and shall not be construed as interpretations of text.

29. SURVIVAL

Notwithstanding completion or termination of this Agreement, or any amendment to this Agreement, the Parties shall continue to be bound by the provisions of this Agreement and subsequent Amendment(s), including the indemnification and insurance provisions, which by their nature shall survive such completion or termination.

30. ATTORNEYS' FEES

In the event of any legal action or other proceeding between the Parties arising out of this Agreement or the transactions contemplated herein, the prevailing Party in such legal action or proceeding shall be entitled to have and recover from the other Party all costs and expenses incurred therein, including reasonable in-house and outside attorneys' fees.

31. AMENDMENT; MODIFICATION

No modification or change to this Agreement shall be binding or effective unless expressly set forth in writing (E.g.via e-mail) by the CPUC Agreement Representative, IOU and Implementer. No oral understanding or agreement not incorporated in this Agreement is binding on any Party. Proposed changes to increase direct implementation costs within the approved total amount for authorized work in Section 6 do not require an amendment. Moving up to 5% of the amount budgeted for marketing and administrative expenses between those two categories do not require an amendment.

Deleted: Proposed changes to the authorized work that are within the scope of the PIP do not require an amendment

Implementer may request changes at any time by sending an e-mail or letter to the IOU stating the following:

- Original approved program design or target
- Requested program design change or target change
- Reason for change
- How the revised program will remain consistent with CPUC goals

31.1 Process

Implementer and IOU Agreement Representative will meet (teleconference or in person) within 5 business days of IOU receipt of fully documented change request to discuss the change, and program progress and activities to date. IOU Agreement Representative will forward request to CPUC Agreement Representative with IOU evaluation of requested change. If CPUC requires further clarification or wants to deny Implementer's request, then CPUC, IOU and Implementer will meet (teleconference or in person) to discuss. After Implementer, IOU, and CPUC reach agreement on the program change, the Implementer shall draft a final request for change outlining the agreed upon changes, and then forward to the IOU Agreement Representative, and to the CPUC Agreement Representative for final approval. CPUC Agreement Representative will notify parties of final CPUC decision through e-mail. IOU Agreement Representative will work with Implementer to process contract change order if this is necessary to implement change.

In the event that a program modification is approved through the above process, Implementer may be required to submit a revised program implementation plan according to the reporting protocols, subject to occasional revision, that are established by CPUC staff.

32. COMMISSION AUTHORITY TO MODIFY/REGULATORY REVIEW

This Agreement is entered into in furtherance of D.01-11-066, D. 2-03-056 D.02-05-046, and D.02-06-026, D.03-08-067, ~~D.03-12-060~~ and shall at all times be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction.

Deleted: 32.1 . .

33. COMPLETE AGREEMENT

This Agreement, as defined herein, constitutes the complete and entire agreement between the Parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein, unless stated below. Neither Party has relied upon any representation, warranty, projection, estimate or other communication from the other not specifically identified in this Agreement.

The Parties hereby agree that no trade usage, prior course of dealing or course of performance under this Agreement shall be a part of this Agreement or shall be used in the interpretation or construction of this Agreement.

34. COUNTERPARTS

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

35. AUTHORITY TO EXECUTE

Each individual executing this Agreement on behalf of IOU and Implementer represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said Party, and that this Agreement is binding upon said Party in accordance with its terms and conditions.

36. CONSTRUCTION OF AGREEMENT

The terms and conditions of this Agreement shall not be construed against either party as the drafting party.

37. CONFLICT OF TERMS

Should a conflict exist between the main body of the Agreement and the Appendices, the main body of the Agreement shall control. Should a conflict occur in the Appendices, the Appendices shall control in following order: Specific Contract conditions, as applicable, Program Implementation Plan as approved by the Commission or its designee, and data request responses submitted regarding the Program Implementation Plan. . Varying degrees of stringency among the main body of this Agreement and the Appendices are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon identification of any conflict or inconsistency in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last written below.

UTILITY

IMPLEMENTER

By: _____

By: _____

Name Printed: _____

Name Printed: _____

Title: _____

Title: _____

Date: _____, 2003

Date: _____, 2003

ATTACHMENTS